



## HONG KONG BAR ASSOCIATION

Secretariat: LG2 Floor, High Court, 38 Queensway, Hong Kong  
E-mail: info@hkba.org Website: www.hkba.org  
Telephone: 2869 0210 Fax: 2869 0189

(Our ref: GC/al/003)

14 January 2020

**The Honourable Carrie Lam, GBM, GBS**  
**Chief Executive**  
**The Hong Kong Special Administrative Region People's Republic of China**  
**Tamar**  
**Hong Kong.**

Dear Chief Executive,

**Re: Proposed establishment of a Commission of Inquiry**

As you are no doubt aware, a representative cross-section of the public has been calling for the setting up of a Commission of Inquiry ("CoI") pursuant to the Commission of Inquiry Ordinance (Cap. 86) to look into various matters arising from the Government's now withdrawn proposal to pass Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 since March 2019, including issues as to use of force by the Hong Kong Police in the ensuing social unrest. As you would also have noted, the Hong Kong Bar Association ("HKBA") has been an active proponent for the establishment of a CoI since June 2019 on various specific issues.

We note that the Government's stance, which you re-iterated as recently as 9 January 2020, has all along been that a CoI is not necessary as there are other existing mechanisms to deal with the various issues as raised, including the Independent Police Complaints Council, which has launched a Study into the relevant public order events. You have in the past also raised the possibility of setting up of a Review Committee to examine the underlying social causes of the unrest.

...2

### 香港大律師公會

香港金鐘道三十八號高等法院低層二樓

**Chairman 主席:**

Mr. Philip J. Dykes, S.C. 戴啟思

**Vice Chairman 副主席:**

Mr. José-Antonio Maurellet, S.C. 毛樂禮

**Honorary Secretary & Treasurer**

名譽秘書及財政: Mr. Jonathan T.Y. Chang 張天任

**Deputy Honorary Secretary**

副名譽秘書: Ms. Po Wing Kay 布穎琪

**Administrator 行政幹事:**

Ms. Dora Chan 陳少琼

**Council Members 執行委員會委員:**

Mr. Lawrence Lok, S.C. 駱應淦

Mr. Johannes M.M. Chan, S.C. (Hon) 陳文敏

Mr. Stewart K.M. Wong, S.C. 黃繼明

Ms. Anita H.K. Yip, S.C. 葉巧琦

Mr. Jeremy J. Bartlett, S.C. 包智力

Mr. Derek C.L. Chan, S.C. 陳政龍

Mr. Erik Sze-Man Shum 沈士文

Mr. Andrew Y.S. Mak 麥業成

Mr. Bruce C.H. Tse 謝志浩

Mr. Jonathan Wong 黃若鋒

Ms. Pauline P.L. Leung 梁寶琳

Mr. Robin Gregory D'Souza

Mr. Randy Shek

Mr. Jeffrey C.K. Tam

Mr. Lester H.L. Lee

Ms. Kim M. Rooney

Mr. Hugh T.T. Kam

Ms. Lorraine H.M. Tsang

Ms. Fiona Fok Ching Chong

Ms. Christy Yuen Pui Wong

蘇諾賢

石書銘

譚俊傑

李曉亮

甘婉玲

金晉亭

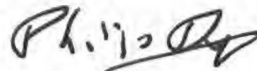
曾希雯

臧蕙澗

黃苑蓓

Nevertheless, the HKBA remains of the view that the setting up of a CoI would go a long way in healing the rifts in our community by providing closure through an open investigation into events which had affected the lives of many of our citizens. To take things forward, a study group within the Bar Council has in the past few months studied the various objections to the setting up of a CoI, the mechanics of how a CoI might operate in the present context (if one is to be appointed), what its Terms of Reference might be and the categories of persons who may be appointed to the CoI for present purposes. The result of this study is a Paper on the Establishment of a Commission of Enquiry which I enclose for your reference. We hope the paper will progress public discussion in this matter. We also hope that the Government will consider the contents of the proposals and render a serious response whether the Government is or is not motivated to change its present position.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Philip Dykes', with a long, sweeping horizontal line extending from the end of the signature.

Philip Dykes, S.C.  
Hong Kong Bar Association



## HONG KONG BAR ASSOCIATION

### PAPER ON THE ESTABLISHMENT OF A COMMISSION OF INQUIRY INTO THE SOCIAL UNREST IN HONG KONG

---

#### Executive Summary

1. The Hong Kong Bar Association (“**HKBA**”) calls for the setting up of a Commission of Inquiry (“**CoI**”) to inquire into Government’s handling of the proposal to pass the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 since March 2019 and circumstances leading to the ensuing social unrest in Hong Kong from June to December 2019 (“**Unrest**”).
2. The HKBA notes the demand for a CoI into events of the last 6 months has overwhelming public support. (See Annex I).
3. This Paper addresses three issues pertinent to the establishment of a CoI. These include: (1) common grounds for opposing the establishment of a CoI and responses to such grounds, (2) Terms of Reference of the CoI, and (3) the composition of the CoI.

#### Common Grounds for Opposing the Establishment of a CoI and Responses to Such Grounds

4. The grounds and the responses are summarised in paragraphs 10 to 34 of the main paper.

#### Proposed Terms of Reference of the CoI

5. The HKBA is of the view that the ToR should give a wide scope for the CoI to conduct an inquiry and the CoI should be referred specifically to a number of incidents and topics in conducting its inquiry. The HKBA proposes the ToR to be as follows:

“To inquire into the Government’s handling of the proposal to pass the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019

since March 2019 and the circumstances leading to the ensuing social unrest in Hong Kong from June to December 2019 (“**Unrest**”), having regard to the events set out in the **Schedule I** and the issues set out in **Schedule II**, and to give recommendations to diffuse social tension involved in the Unrest.”

6. These events in Schedule I include those on 12 June, 1 July, 21 July, 11 August, 31 August, 1 October and throughout November. These issues in Schedule II include the use of force by the Police and protestors, the treatment of arrested persons, the response of the Government, the Executive Council and the Police to the Unrest, health issues arising from the weapons used and the political neutrality of civil servants. For a complete list of the events and issues, please refer to paragraphs 36 and 37 of the main paper.

#### **Proposed Composition of the CoI**

7. It is of paramount importance that the public has the utmost faith and confidence in a CoI which is to be appointed. In order to enhance public confidence in the CoI, transparency in the selection procedure of its commissioners is of equal importance as the actual choices thereof.
8. The HKBA proposes that there should be a list of objective criteria for the selection of commissioners which include:
  - 8.1. The character of the candidate, including his integrity, independence, commitment to the rule of law, intelligence, capacity for hard work and ability to work with others;
  - 8.2. The needs of the CoI;
  - 8.3. Merit of the candidate, including his qualifications, skills, work and life experience, contributions to the community and knowledge of the Unrest (such as the events and issues listed in **Schedule I** and **Schedule II** to the ToR); and
  - 8.4. Diversification in terms of gender, age, education, work, social stratum and residential area.



9. HKBA proposes that the CoI be chaired by a retired Judge, or sitting / retired Non-Permanent Judge, of the Court of Final Appeal and include 2, 4 or 6 other members which may include a medical doctor, a sociologist, an individual with police experience, an individual with civil activism experience or lay members. For details please see paragraphs 39 to 54 of the main paper.

Dated 14<sup>th</sup> day of January 2020.

Hong Kong Bar Association



## HONG KONG BAR ASSOCIATION

### PAPER ON THE ESTABLISHMENT OF A COMMISSION OF INQUIRY INTO THE SOCIAL UNREST IN HONG KONG

---

#### **I. Introduction**

1. The Hong Kong Bar Association (the “**HKBA**”) tenders the present paper with a view to progressing the discussion in the community in respect of the setting up of a Commission of Inquiry (“**CoI**”) under the Commissions of Inquiry Ordinance (Cap. 86) (the “**COIO**”), noting the overwhelming public support for a CoI. The paper seeks to address arguments against a CoI (Part IV), and renders proposals on the practical and procedural aspects of a CoI, including its terms of reference (Part V), composition and selection method (Part VI).

#### **II. Background**

2. HKBA has repeatedly called for the setting up of a CoI to inquire into various events and issues which have arisen in Hong Kong since early June 2019 in response to the Government’s proposal to pass the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 (the “**Fugitives Bill**”).<sup>1</sup> Since June 2019, the vehement public responses to the Fugitives Bill have descended into unprecedented social unrest on an extensive scale (the “**Unrest**”).
3. The HKBA notes that the establishment of a CoI has overwhelming public support from a wide cross-section of the

---

<sup>1</sup> HKBA, *Statement on Police Action in Relation to Public Protests* (3 September 2019); HKBA, *Statement of the Hong Kong Bar Association in Respect of Mass Defiance of Court Injunctions* (2 September 2019); HKBA, *Press Release of the Hong Kong Bar Association on the Violent Attacks on Members of the Public in Yuen Long on 21 July 2019* (24 July 2019); HKBA, *Press Release on the Events at Legislative Council on 1 July 2019* (5 July 2019); and HKBA, *Press on the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019* (21 June 2019).



community, including a former Hong Kong Chief Justice, many former government officials, present and former Legislative Council (“**Legco**”) members, religious leaders, local and international trade bodies, captains of industry, local and overseas NGOs, and the United Nations High Commissioner on Human Rights.<sup>2</sup> See **Annex I** detailing the public surveys on this matter and a list of organisations and individuals who support a CoI.

4. Despite the clear community consensus, the Chief Executive (the “**CE**”) has so far rejected the proposal,<sup>3</sup> including most recently on 7 January 2020.<sup>4</sup> The CE’s reasons for not setting up a CoI was, firstly, that there are existing statutory mechanisms to address issues of Police conduct (or misconduct) – a key aspect into which the public has demanded an independent inquiry – by way of complaints to the Complaints Against Police Office (“**CAPO**”) with oversight by the Independent Police Complaints Council (the “**IPCC**”), and that the IPCC has also launched a study into Police conduct during the Unrest (the “**Study**”) with the assistance of a panel of international experts on police matters (“**Expert Panel**”). Later, in the aftermath of the District Council election on 24 November 2019, the CE has further proposed the setting up of an independent review committee (“**Review Committee**”) to examine the underlying social, economic and political causes of the Unrest and to recommend relevant Government measures.<sup>5</sup>
5. It is quite clear that none of these measures has assuaged public demand for a CoI. In that regard, on 20 December 2019, the Court of First Instance granted leave to judicially review the IPCC’s decision to conduct the Study on the ground that such decision is ultra vires the IPCC’s statutory powers (see further below).<sup>6</sup> Further, on 11 December 2019, the Expert Panel decided to step down from its role owing to what it (and many sectors, including the HKBA) sees as the inadequate powers of the IPCC to address

---

<sup>2</sup> Bachelet, *Hong Kong’s Leaders have only one Way out of the Protest Crisis – a broad, open and inclusive Dialogue with the Whole Community* (30 November 2019).

<sup>3</sup> HKFP, *Hong Kong to officially withdraw Extradition Bill from Legislature, but still No Independent Probe into Crisis* (4 September 2019); and HKFP, *Hong Kong Leader Carrie Lam says Protests will be addressed with Local Laws, amid Rumours of Emergency Legislation* (27 August 2019).

<sup>4</sup> 香港電台, 林鄭月娥：不應走獨立調查委員會這條路 (7 January 2020).

<sup>5</sup> SCMP, *Pro-Establishment Allies of Hong Kong Leader Carrie Lam lament to her that Voters punished them at Polls for Government’s Handling of Protests* (26 November 2019).

<sup>6</sup> *Lui Chi Hang Hendrick v. Independent Police Complaints Council* [2019] HKCFI 3120 at §§1 and 49 (K. Yeung J).

the complex issues involved in the Unrest.<sup>7</sup> The proposed Review Committee likewise lacks statutory powers and public support.

### **III. Basic Principles regarding Commissions of Inquiry**

6. The purposes of establishing a CoI are manifold<sup>8</sup> and include the following:
  - 6.1. Seeking to provide a full and fair account of what truly happened at event(s) at specified time and place;
  - 6.2. Seeking to identify the causes of the relevant events;
  - 6.3. Seeking to identify wrongdoing or culpability of individuals and organisations;
  - 6.4. Setting out recommendations to the Government to prevent recurrence of similar events in future;
  - 6.5. Restoring public confidence in the Government, departments under the Government and public authorities; and
  - 6.6. Providing an opportunity for reconciliation and resolution.
7. A CoI is deemed to be a judicial proceeding.<sup>9</sup> The statutory powers of a CoI have been widely publicised in recent months, including powers to summon witnesses and documents. A list of the powers can be found in **Annex II** hereto.
8. Importantly, witnesses to a CoI enjoy absolute immunity from suit.<sup>10</sup>
9. Inquiries by CoI are familiar instruments in Hong Kong. Since the COIO was enacted in 1968, 16 CoIs have been established. A list of all the CoIs established in Hong Kong (with their Terms of

---

<sup>7</sup> The Wall Street Journal, **Foreign Panel Steps Down From Probe of Hong Kong Police** (10 December 2019); and SCMP, **Overseas Experts advising Police Watchdog on Hong Kong Protests quit their Jobs as Disagreement over Powers remains unresolved** (11 December 2019).

<sup>8</sup> Beer, **Public Inquiries** (2011) (Oxford University Press) at 2-3; and Feldman (Ed.), **English Public Law** (2009) (Oxford University Press) at 951-952.

<sup>9</sup> Section 11 of the COIO.

<sup>10</sup> Section 12 of the COIO.



Reference) is provided in Annex III. Annex IV contains particulars of similar independent commissions appointed to investigate important social events overseas.

#### **IV. Common Grounds for opposing the Establishment of a CoI and Responses to such Grounds**

10. Over the course of the past 6 months, a variety of grounds have been put forward against the establishment of a CoI. The HKBA has examined these reasons. Set out below are the HKBA's responses.

##### **A. Existence of the Mechanisms under CAPO and the IPCC**

11. The HKBA in its statement dated 5 July 2019 gave an account as to what it saw (and still sees) as the institutional inadequacies of the IPCC to address the issues which a CoI would be able to tackle.<sup>11</sup>
12. It has been mentioned that on 20 December 2019, the Court of First Instance granted leave for judicial review of IPCC's decision to conduct the Study. K. Yeung J, in his judgment, examined whether the IPCC has the powers to proactively conduct a fact-finding study.<sup>12</sup> He observed that on the face of the Independent Police Complaints Council Ordinance (Cap. 604) ("**IPCCO**"), the IPCC has no express proactive power to find facts.<sup>13</sup> He further observed that the legislative history of the IPCCO explicitly stated that "The Administration considers it inappropriate to confer IPCC with investigative power [...]".<sup>14</sup> Taking these into account, he ruled that it is reasonably arguable that the IPCC does not have such powers.<sup>15</sup>
13. Incidentally, the media reported that the Expert Panel had decided to step down because of the lack of powers of the IPCC to deliver a meaningful study into the relevant events.<sup>16</sup>

---

<sup>11</sup> HKBA, Press Release on the Events at Legislative Council on 1 July 2019 (5 July 2019).

<sup>12</sup> *Lui Chi Hang Hendrick v. Independent Police Complaints Council* (2019) at §23 (K. Yeung J).

<sup>13</sup> *Lui Chi Hang Hendrick v. Independent Police Complaints Council* (2019) at §24 (K. Yeung J).

<sup>14</sup> *Lui Chi Hang Hendrick v. Independent Police Complaints Council* (2019) at §§25 and 30 (K. Yeung J).

<sup>15</sup> *Lui Chi Hang Hendrick v. Independent Police Complaints Council* (2019) at §31 (K. Yeung J).

<sup>16</sup> Time, Hong Kong's Police Watchdog is Unable to Do Its Job, Experts Say (11 November 2019).

14. Importantly, as can be seen from a public interview in August 2019, the Chairman of the IPCC himself is not against the idea of a CoI to be established in parallel with the Study.<sup>17</sup>

***B. Review Committee***

15. The Review Committee is likewise an insufficient mechanism for the following reasons.

15.1. It does not have any of the legal powers of a CoI.

15.2. Whilst the details of the scope and purpose of the Review Committee are sketchy at the moment, according to the CE it will not address the critical issue of culpability, whether of individuals or organisations (「對事不對人」)<sup>18</sup>. Without such findings, there cannot realistically be closure of the antagonism between the public and the Government and its executive arms including, in particular, the Police.

16. Only when there is an open inquiry by a CoI equipped with the statutory powers to assist it in finding the truth and accountability can there be genuine possibilities of restoration of trust and reconciliation. In this regard, it is important to bear in mind that, even if CAPO and the IPCC can deliver on Police accountability (and there are legitimate doubts on this), there remains the accountability of other parties who may have contributed to the Unrest.

17. In contra-distinction, a CoI is a statutory creature with full backing of the law. Thus, there is, in addition to all the merits of a CoI discussed above, symbolic importance in establishing a CoI. The use of the most powerful tool available would be an indication that a matter of the greatest public importance is being properly addressed.

***C. Inherent Deficiencies with the Scope of a CoI***

---

<sup>17</sup> SCMP, *Commission of Inquiry is Possible but Let's Not Look Into Individual Police Officers' Conduct: IPCC Chief Anthony Neoh* (20 August 2019).

<sup>18</sup> Carrie Lam, *Post on Facebook Page of 林鄭月娥 Carrie Lam* (26 November 2019).

18. Another frequently raised argument is that the scope of investigation for a CoI would be too wide because the Unrest has lasted some months already during which many incidents have occurred. It is also said that the causes are very complex, possibly extending to the ever-widening wealth gap, problems with shortage of housing and the lack of youth employment opportunities. That means, the argument goes, the process would take a long time since evidence would need to be received from a vast range of people, possibly from the CE down to the student protestors to ensure a full comprehension of the issues.<sup>19</sup>
19. In addressing this argument, the HKBA notes with regret at the outset that the CE had failed to set up a CoI at the early stage of the Unrest despite strong public demands for it since June 2019 – HKBA called for an independent inquiry as early as 13 June 2019 into the Police-protester confrontations outside the Legco Complex on 12 June 2019. An early Government response would likely have arrested the drastic deterioration of social antagonism built up since the Government proposed the Fugitives Bill. The difficulties faced by a CoI on account of the scale of the Unrest have largely been self-inflicted by the Government.
20. That said, the purported obstacles are clearly not insuperable.
21. A CoI could render a report for a specified time period with focus on major incidents and by reference to identified topics. One possible set of Terms of Reference (“**ToR**”) is set out below. Further, it would be open to the CoI to determine its own procedure, including setting up sub-committees and expert panels to look into specific incidents or topics. A CoI is usually headed by experienced individuals such as sitting or retired judges who would surely be in a good position to manage a wide scope of inquiry.
22. Insofar as it is said that a CoI would take a long time to render a report having regard to the depth and breadth of the Unrest, this is hardly a persuasive argument. The Unrest is unprecedented in Hong Kong and the requirements of justice arising from the Unrest are also of phenomenal importance to Hong Kong. In any event,

---

<sup>19</sup> Grenville Cross, **Carrie Lam must stand her Ground against the Fanatics who have hijacked the Protests** (23 August 2019); and SCMP, **Hong Kong Protestors want to protect Freedoms? Work on Defending ‘One Country, Two Systems’ First**, Retired Judge Henry Litton says (20 August 2019).

measures can be taken to alleviate the time taken including the appointment of more commission members (see paragraph 39 et seq.), the hiring of more and experienced supporting staff members, investigators and expert advisors, the bundling of similar issues or events of a similar nature to be handled together for time-saving, the issuance of periodic reports, the setting of strict timetables and an increase in the time available for hearings each week. Again, case management is a routine and familiar task for experienced judicial officers.

23. Indeed, the HKBA proposes that the CoI, if appointed, should deliver periodic interim reports on matters already investigated.

***D. On-Going Nature of the Situation***

24. A related argument is since the Unrest is still continuing, it is presently not an appropriate time to establish a CoI.<sup>20</sup>

25. The argument is superficial rather than real.

- 25.1. The IPCC has also embarked on the Study into events which are on-going. Likewise, the Government has proposed a Review Committee which would presumably look into past events. Should the argument be of any substance, neither of these ideas ought to have been initiated.

- 25.2. There is no reason why the CoI cannot begin its investigation into specific events for a specific time period as suggested above. Interim reports can be published once prepared.

- 25.3. If further events relating to the Unrest continue to take place, there is nothing to stop the CE expanding the ToR of the CoI appointed if necessary. The CoI into the construction of the Shatin-Central Link railway lines is a recent example. Likewise, this has been the approach taken by the IPCC to its Study, with the first report thereof limited to the period of

---

<sup>20</sup> The Standard, **Police Watchdog Appointee says she is Apolitical** (5 September 2019); and 曾鈺成, 先止亂, 後調查 (29 July 2019).



the Unrest between 9 June 2019 and 2 July 2019 and to be extended subsequently.<sup>21</sup>

- 25.4. Overseas experience has shown that the establishment of a statutory inquiry at an early stage can serve as a means to ending a conflict.<sup>22</sup> Given the consensus of the public to establishing a CoI, a positive response by the Government might well become a catalyst in alleviating the current tension, by giving the community much needed breathing space.

**E. Bias against the Police and negative impact on the Government and the Police**

26. These arguments can be considered together.
27. It is argued that any CoI established to look into the Unrest is likely to focus on the conduct of the Police, which is unfair, and the conduct of the protestors - which might well have caused or provoked reaction from the Police - may be overlooked. This, it is argued, is particularly worrying in view of the difficulty in identifying the protestors (many of whom were masked)<sup>23</sup> and that they claim to be “leaderless” with no one being more culpable than the other<sup>24</sup> and the protestors could choose not to testify and be identified.<sup>25</sup>
28. It is also argued that a CoI will have a significant negative impact on the Government and the Police in terms of their image and morale.
29. As regards the “bias” argument, it has to be noted at the outset that many protesters suspected of having committed various criminal offences, such as arson, criminal damage, assaulting and obstructing police officers, assault and wounding of civilians, have

---

<sup>21</sup> IPCC, IPCC extends its Scope of Fact-Finding Study on the Recent Public Order Events and appeals for Information from All (16 August 2019).

<sup>22</sup> Bahrain Independent CoI, Commissions of Inquiry (2011).

<sup>23</sup> 葉劉淑儀, 獨立調查委員會 能平息局亂嗎? (6 August 2019); and 香港電台, 唐英年不贊成設獨立調查委員會 只調查警方不公 (26 June 2019).

<sup>24</sup> 王文彥, 不應該為香港暴動亂局成立獨立調查委員會(2) (11 September 2019).

<sup>25</sup> 王文彥, 不應該為香港暴動亂局成立獨立調查委員會(2) (11 September 2019); SCMP, CoI is Possible but let's not look into Individual Police Officers' Conduct: IPCC Chief Anthony Neoh (20 August 2019) and 葉劉淑儀, 獨立調查委員會 能平息局亂嗎? (6 August 2019).

been or are being dealt with under the existing criminal justice system, by being arrested and/or charged for relevant offences. The argument overlooks the need to render Police officers, being vested with public powers, weaponry and authority, accountable for alleged unlawful acts, in circumstances that no Police officer has been seen to have been dealt with by any Police investigation or public prosecution. As has been noted by the HKBA in the past, there is nothing more corrosive to the rule of law than for state agents, entrusted with public power, to inflict excessive violence and not be held to account for misconduct.<sup>26</sup>

30. As regards perceived negative impact on the Government and the Police, there are several strands to this argument.

31. Firstly, it is said that the establishment of a CoI might affect Police work, and should best be left until the Unrest is over. It is said that Police work might be affected in two different ways: firstly, the CoI might investigate into the way the Police handled a particular incident (and the tactics used) when the Police might be handling current or continuing operations in the same manner (using the same tactics).<sup>27</sup> Secondly, it is said that the Police might be investigating a protestor for an incident but that protestor could become a witness to the CoI for the same incident.<sup>28</sup>

31.1. As regards the first objection, whether any such objection can be made out will depend on the facts in each particular case. It would at all times be open to the Police to apply for exemption from disclosure on grounds of “public interest immunity” (“PII”) if it sees fit, if it is believed that disclosure of certain information might jeopardise an on-going investigation; the CoI will rule on the matter depending on the grounds presented in each particular case and the objections to such claim for PII. The likelihood of compromise is something that the Police would have to make out at each particular instance and is not in and of itself a ground for objecting to the establishment of a CoI.

---

<sup>26</sup> SCMP, **Hong Kong Bar Association wants Barristers to help Government find a Solution to the City’s Crisis** (17 October 2019).

<sup>27</sup> 曾鈺成, 先止亂, 後調查 (29 July 2019).

<sup>28</sup> 曾鈺成, 先止亂, 後調查 (29 July 2019).

- 31.2. As regards the second objection, namely, that a person subject of investigation (whether or not he/she has been arrested by the Police) may be a witness in a CoI, it is difficult to see how Police action might or would be undermined. If the evidence given by the suspect tends to exculpate him/her, this should prompt the Police into dropping the relevant investigation or to release the suspect. If the evidence tends to inculcate the suspect this would provide further leads of investigation to the Police. Not only does the CoI not hamper Police work, it will in fact assist the Police in identifying whether to pursue an investigation.
- 31.3. Ultimately, it is to be borne in mind that accountability is no less important than public order in the context of the purposes of setting up of a CoI.
32. Secondly, it is said that the establishment of a CoI could lead to findings against members of the Government or the Police and criminal prosecutions thereafter.<sup>29</sup>
- 32.1. It is self-evident that this is not a reason for not establishing a CoI. If wrongdoing is widely perceived by the public and ultimately found to have been committed, there is no reason why its perpetrators, whether or not from the public sector, and regardless of their seniority, should not be brought to account and legal recourse.
- 32.2. In any event, the basis of this fear is misplaced. The fear is alleged to originate from the prosecution of two Government officials after the CoI into the Collision of Vessels near Lamma Island on 1 October 2012. However, the Report of that CoI never recommended that the individuals concerned be prosecuted or any action be taken against them.<sup>30</sup> It was in fact the Police, who having studied the Report and acting on its own initiative, decided to lay charges against the officials concerned.<sup>31</sup> This is simply a logical consequence of a proper and independent inquiry.

---

<sup>29</sup> Kam-yin Yu, **Police have got it all Wrong about the Independent Inquiry** (14 August 2019).

<sup>30</sup> Michael Lunn & Benjamin Tang, **Report of the CoI into the Collision of Vessels near Lamma Island on 1 October 2012** (April 2013) at 181-184.

<sup>31</sup> Kam-yin Yu, **Police have got it all Wrong about the Independent Inquiry** (14 August 2019).

- 32.3. In any event, the absence of a CoI does not preclude criminal liability of members of the Government and the Police.<sup>32</sup> There were calls for a CoI into the Umbrella Movement.<sup>33</sup> None was established but it did not preclude the prosecution of a superintendent<sup>34</sup> and seven Police officers for assaults.<sup>35</sup> The current problem perceived by the public is that the Police simply has not investigated into alleged misconduct of themselves during the Unrest and decisions as to tactics of the Police, creating situations of real or perceived conflicts of interest.
33. Thirdly, it is said that the establishment of a CoI will hamper the morale of the Police.<sup>36</sup>
- 33.1. It defies logic that any suspected wrongdoing of the Police would always be free from legal consequences, even an inquiry. Indeed, it has never been the case in Hong Kong that the feelings of the suspected perpetrators of possible wrongdoing are taken into account in determining whether the matter should be investigated or not. The HKBA notes that the CE has denied that Police morale is a relevant consideration.<sup>37</sup>
- 33.2. This reasoning presupposes that a CoI would find wrongdoing on the part of the Police. Equally possibly, the CoI might exonerate the Police of alleged misconduct notwithstanding contrary public perception. In such event, the morale of the Police would be enhanced rather than dampened.<sup>38</sup> At the very least, the Police will be given a fair opportunity to openly explain to the public before the CoI their actions (or inactions) during the Unrest. If the CoI were indeed to find wrongdoing on the part of some elements of the Police, then as in any previous cases the rest of the

<sup>32</sup> 信報, 張炳良：警毋須怕獨立調查 南丫海難高官入獄是兩回事 (27 August 2019).

<sup>33</sup> 大紀元, 傘運警權報告：二千人受傷害 (16 June 2015).

<sup>34</sup> *HKSAR v. Chu Frankly* [2019] HKCFA 5.

<sup>35</sup> *HKSAR v. Wong Cho Shing* [2019] HKCA 839.

<sup>36</sup> SCMP, *Hong Kong Protests: Carrie Lam has ruled out CoI into Police Actions, so what can replace it and will it work?* (6 September 2019); Now 新聞台, *有警察工會主席指成立獨立調查委員會打擊警隊士氣* (29 June 2019); and Kenneth Leung, *Why we need an Independent Commission to Probe June 12 Clashes* (28 June 2019).

<sup>37</sup> HK01, *林鄭見青年稱獨立調查要平衡警隊反應 特首辦：與政府立場無關* (28 August 2019).

<sup>38</sup> 星島日報, *林志偉：獨立調查打擊警隊士氣* (30 June 2019).



Police should welcome such findings since bad elements are identified and justice is served.

- 33.3. Lastly, the HKBA notes that there are repeated reports that there are Police officers who in fact support the establishment of a CoI.<sup>39</sup>

#### **F. Conclusion**

34. The HKBA remains firmly and unconditionally committed to the proposal to establish an independent CoI. The purposes which may be served by a CoI far outweigh any perceived drawbacks.

#### **V. Proposed ToR of the CoI**

35. The HKBA has studied the ToR for CoIs established in Hong Kong and abroad<sup>40</sup> and is of the view that the ToR should give a wide scope for the CoI to conduct an inquiry. Having regard to the complexity of the issues involved in the Unrest, HKBA proposes that the CoI be referred specifically to a number of incidents and topics in conducting its inquiry, and proposes the ToR to be as follows:

“To inquire into the Government’s handling of the proposal to pass the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 since March 2019 and the circumstances leading to the ensuing social unrest in Hong Kong from June to December 2019 (“Unrest”), having regard to the events set out in the **Schedule I** and the issues set out in **Schedule II**, and to give recommendations to diffuse social tension involved in the Unrest.”

36. **Schedule I** contains the following incidents:

---

<sup>39</sup> 星島日報, 曾鈺成倡特郝被捕示威者 指建制派曾私下促特首獨立調查 (17 November 2019); 大紀元, 超七成現職及退休警員支持成立獨立調查委 (20 September 2019); 明周, 【現役警員】支持獨立調查警隊 以香港年輕人為榮 (28 August 2019); and 香港電台, 「準警嫂」: 仍有正義警察 盼成立獨立調查委員會重整 (23 August 2019).

<sup>40</sup> Yiu-kai Au et al., **Letter to the Chief Executive** (23 July 2019); and Amnesty International Hong Kong et al., **Letter to the Chief Executive** (28 June 2019).

The clashes that took part in various districts of Hong Kong and led to serious injuries on the following dates:

1. 12 June 2019 (including the large-scale clashes outside the Legco Complex and CITIC Tower).
2. 1 July 2019 (including the large-scale clashes outside the Legco Complex and the breaking into of the Legco Complex).
3. 14 July 2019 (including the large-scale clashes inside New Town Plaza in Sha Tin).
4. 21 July 2019 (including the large-scale clashes near the China Liaison Office and the Yuen Long gang attack on passengers).
5. 5 August 2019 (including the general strike and large-scale clashes in various districts).
6. 11 August 2019 (including the large-scale clashes in many districts, Police action inside Tai Koo MTR Station and shooting of the eye of a protestor).
7. 13 August 2019 (including protestor actions at the Hong Kong International Airport).
8. 31 August 2019 (including Police actions inside the Prince Edward MTR Station).
9. 29 September 2019 (including the large-scale clashes in many districts).
10. 1 October 2019 (including the large-scale clashes in many districts and shooting of a live round injuring a youth).
11. 4 to 6 October 2019 (including the large-scale clashes following the announcement of enactment of the Prohibition on Face Covering Regulations (Cap. 241K)).

12. 20 October 2019 (including the large-scale clashes in Kowloon and the use of water cannon at the Kowloon Mosque).
  13. 2 to 8 November 2019 (including the circumstances leading to the death of Hong Kong University of Science and Technology student Chow Tzk-lok).
  14. 11 to 15 November 2019 (including the siege of Chinese University campus, Police actions in various districts, the firing of teargas in Central and the firing of live rounds on 2 protesters in Sai Wan Ho).
  15. 17 to 29 November 2019 (including the siege of Hong Kong Polytechnic University and the stampede in Yau Ma Tei on 18 November 2019).
37. **Schedule II** contains the following issues and topics:
1. The use of force by the Police (including the weapons available and used) and by protestors (including the weapons available and used).
  2. Problems associated with identification, including the use of face covering tools by participants in conflicts, the non-use of identification by Police officers and the deployment of undercover officers.
  3. Problems associated with arrests, including the arrest of bystanders to conflicts, the non-arrest of participants in conflicts (whether protestors, Police officers or gang members) and the arrest of juveniles.
  4. Treatment of arrested persons, including alleged physical or verbal abuse, sexual harassment or assault, failure to provide sustenance, delayed access to lawyers and breaches of privacy.
  5. The relationship between the Police and secondary actors such as journalists, medical personnel, social workers, and other parties attempting to mediate and / or de-escalate conflict and other disciplined services.

6. Response of the Government, the Executive Council and the Police to the Fugitives Bill, issues arising and various incidents in the Unrest, including the utility, speed, comprehensiveness and veracity of such responses.
  7. Issues associated with statutory mechanisms, including the Public Order Ordinance (Cap. 245), the IPCCO and the Emergency Regulations Ordinance (Cap. 241).
  8. Health issues arising from the weapons used by different participants in conflicts.
  9. Political neutrality of civil servants and disciplined forces.
  10. Sources of funding for and management of participants in the Unrest.
38. For sake of clarity, the proposed ToR is set out in full in **Annex V** with explanatory notes on why the aforementioned issues as set out in Schedule II should be canvassed by the CoI.

## **VI. Proposed Composition of the CoI**

39. Needless to say, it is of paramount importance that the public has utmost faith and confidence in a CoI which is to be appointed, given that the matters to be investigated and any resulting recommendations are of the greatest public importance. Indeed, as succinctly pointed out by the Attorney General, Maurice Heenan, during the second reading of the Commissions of Inquiry Bill: “Obviously, it is to everyone’s advantage that the public should feel the greatest confidence in the findings of fact arrived at by a Commission, [...]”.<sup>41</sup> In order to enhance public confidence, transparency in the procedure in the selection of members of the CoI is of equal importance as the actual choices of individuals sitting on the CoI.
40. Under the COIO, the CE-in-Council appoints a CoI.<sup>42</sup> This does not mean that the CE-in-Council could not or should not consult the public on the selection of members of a CoI. Indeed,

---

<sup>41</sup> Hong Kong Hansard (5 June 1968).

<sup>42</sup> Section 2(1) of the COIO.



consultation of the public would serve to secure public confidence in the perceived fairness of a CoI, particularly in view of the low level of public trust in the incumbent Government at this moment.

41. Thus, the HKBA proposes that the CE's appointment of a CoI should, firstly, follow a list of objective standards that is open to the public to render a higher degree of fairness, transparency and legitimacy, and secondly, the selection of certain members should be in consultation with defined relevant professions as further explained below.
42. The criteria for selecting candidates for the COI should include the following:
  - 42.1. Character of the candidate, including his integrity, independence, commitment to the rule of law, intelligence, capacity for hard work and ability to work with others;
  - 42.2. The needs of the CoI;
  - 42.3. Merit of the candidate, including his qualifications, skills, work and life experience, contributions to the community and knowledge of the Unrest (such as the events and issues listed in **Schedule I** and **Schedule II** to the ToR); and
  - 42.4. Diversification in terms of gender, age, education, work, social stratum and residential area.
43. Insofar as the composition of the CoI is concerned, as the HKBA has previously proposed, any CoI should involve individuals with judicial experience, given that an inquiry is a judicial proceeding and requires persons with judicial skill and experience to handle the complexity of the issues involved. With 2 exceptions (back in 1968 and 1973), the CoIs in Hong Kong in the past were all chaired by experienced or sitting Judges.
44. The HKBA proposes that a CoI to be appointed should have 3, 5 or 7 members. The HKBA further proposes that this CoI be chaired by a retired Judge, or sitting / retired Non-Permanent Judge, of the Court of Final Appeal ("CFA"). Judges at the CFA are members of the Judiciary with the highest standing and the appointment of one such individual to chair the commission would lend it authority and credibility. Mindful of the caseload of the CFA, and that there are

only 3 sitting Permanent Judges at the CFA, the HKBA is wary about proposing the appointment of a sitting Permanent Judge of the CFA. The Chairman of the CoI should be selected in consultation with the Judiciary, HKBA and the Hong Kong Law Society (the “HKLS”).

45. The HKBA further proposes that the remaining members of the CoI may consist of any of the following:
  - 45.1. A medical doctor in consultation with the medical profession;
  - 45.2. A sociologist;
  - 45.3. Either an active or retired Police officer or an individual with experience on policing practices and procedures;
  - 45.4. Either an active protestor participant in the Unrest or an individual with experience in civil activism; or
  - 45.5. A lay member or members chosen from the pool of potential Jurors.
46. Inclusion of a medical doctor may be desirable given the high number of incidents of injury in various quarters. That said, there is nothing to stop the CoI seeking expert evidence on various matters, including medical opinion, in the event the CoI membership does not include such a professional.
47. Similarly, the inclusion of a sociologist would be sensible given the wide variety of sociological aspects to the Unrest, and the need to have context to what has happened, be it how social movements developed, the role of different actors within a social movement, society’s relationship with a Police force and the radicalisation of youth amongst others.
48. Further, the suggestion to include a Police and a protestor representative is to ensure that the views, knowledge and experiences of important actors of the Unrest are heard in the decision making process of the CoI. Such participation is important to ensure that the findings and recommendations of the CoI are as grounded in reality as possible.

49. Finally, the suggestion that individuals could be selected from the Jury pool to serve as commissioners is based on the notion that the decision making process of the CoI should have public participation, particularly when the Unrest has had such a great impact on the public and the public views the CoI as a greatly important mechanism.
50. On the proposed composition of a CoI, the HKBA has had reference too to comparable experiences from overseas. Thus, for instance, the South African Truth and Reconciliation Commission ("**South African CoI**"), established in 1996 to inquire into the country's apartheid regime, consisted of 15 members. The Independent Commission on Policing for Northern Ireland ("**Northern Ireland CoI**"), established in 1998 to inquire into the contentious conduct of its Police during the Troubles, consisted of 8 members and the Commission for the Clarification of Truth, Co-existence and Non-repetition of Colombia ("**Colombian CoI**"), established in 2017 to inquire into its 5 decade civil war, consists of 11 members.
51. Whilst CoIs in Hong Kong in recent years have typically consisted of 2 individuals, the Unrest is a matter of the greatest public importance and a tribunal of a significantly larger setup symbolically helps reflect this. More practically, a larger setup ensures a greater volume and diversity of experience and views are brought to inform the decisions made. Further, the scope of a CoI to inquire into the Unrest would be far larger than commissions of the past and a greater membership number would ensure that there are more people to handle the inquiry and that the process can therefore maintain a certain speed.
52. The South African CoI had two political activists / human rights advocate, two doctors and a specialist in nursing and health care with a focus on violence, trauma and torture rehabilitation amongst its membership. The Northern Ireland CoI had an existing Police officer and 3 individuals with experience in policing practices and procedures on board. And the Colombian CoI includes two activists, two doctors (one being a psychologist as well) and a sociologist. This reflects the diverse compositions that are readily appointed to serve on a CoI.
53. In setting out the criteria for selecting members of the CoI above, the HKBA has had reference to the United Kingdom's Inquiries

Act 2003<sup>43</sup> and the Truth, Reconciliation and Regulations Commission Act 2017 of The Gambia,<sup>44</sup> pursuant to which a CoI was appointed to inquire into the serious violations of human rights during the dictatorship the country was under between 1994 and 2017.

54. Whilst the HKBA readily acknowledges that different countries have different practices and what may be suitable in one jurisdiction may not be suitable in another, what these overseas experiences do show is that different models of CoIs (perhaps different from the norm in Hong Kong) are possible and serious consideration should be given to devising a model that best allows the CoI to achieve its purposes and to be (seen as) fair, independent and representative.

Dated this 14<sup>th</sup> day of January 2020.

---

<sup>43</sup> Section 8(1) of the Act.

<sup>44</sup> Sections 4, 5(1) and 5(3) of the Act.



## **ANNEX I**

### **Public Surveys, Individuals and Organisations supporting the Establishment of a CoI<sup>1</sup>**

---

#### ***A. Public Surveys***

1. Survey by Blackstone Research, published in December 2019, in which 66.7% of those sampled supported the establishment of a CoI;<sup>2</sup>
2. 「逃犯條例修訂草案」的意見調查調查 2019: 「我們香港人」計劃特殊項目（第二部分），published in November 2019, in which 83.7% of interviewees supported the establishment of a CoI;<sup>3</sup>
3. 有關「逃犯條例修訂草案」意見調查調查結果（第五輪），published in October 2019, in which 87.6% of interviewees supported the establishment of a CoI;<sup>4</sup> and
4. 「修訂逃犯條例」民意調查，published in July 2019, in which 79% of interviewees supported the establishment of a CoI.<sup>5</sup>

#### ***B. Individuals***

5. A former Chief Justice;<sup>6</sup>
6. A former Chief Secretary;<sup>7</sup>

---

<sup>1</sup> There is an equally voluminous number of foreign observers and organisations who also support the establishment of a CoI. The HKBA is prepared to provide a list of examples if required.

<sup>2</sup> SCMP, **Police Reputation in Tatters across the Political Divide according to Online Survey of Hong Kong Voters (21 December 2019)**;

<sup>3</sup> 香港民意研究所, 「逃犯條例修訂草案」的意見調查調查 2019: 「我們香港人」計劃特殊項目（第二部分）(November 2019).

<sup>4</sup> 香港中文大學傳播與民意調查中心, 有關「逃犯條例修訂草案」意見調查調查結果（第五輪）(September 2019).

<sup>5</sup> 香港民意研究所, 香港民意研究計劃 & 公民實踐培育基金, 「修訂逃犯條例」民意調查 (31 July 2019).

<sup>6</sup> Andrew Li, **A Commission of Inquiry into Police Conduct can help Hong Kong's Healing Process – an Amnesty for Protestors cannot** (9 July 2019).

7. A former Chairman, and former Members, of the IPCC;<sup>8</sup>
8. Former political ministers and senior government officials;<sup>9</sup>
9. Two former President of the Legislative Council;<sup>10</sup>
10. Present and former Members of the Legislative Council;<sup>11</sup>
11. Present and former Chairmen of various statutory bodies;<sup>12</sup>
12. Present and former Vice Chancellors of various universities;<sup>13</sup> and
13. Religious leaders.<sup>14</sup>

### C. Organisations

14. The Hong Kong General Chamber of Commerce;<sup>15</sup>

---

<sup>7</sup> Anson Chan, **In one Voice, Hong Kong demands an Independent Inquiry into the Unrest. Why won't Carrie Lam say Yes?** (21 November 2019); and 眾新聞, **陳方安生接受 BBC 訪問：公眾要求獨立調查委員會調查政治危機根源（有片）** (18 September 2019).

<sup>8</sup> SCMP, **Hong Kong's Justice Department denies Prosecution of Protestors is politically motivated, as 3000 of City's Legal Profession take part in second Silent March** (7 August 2019); and HK01, **10 名前監督會委員聯署 促設調查委員會重建警民互信** (24 June 2019).

<sup>9</sup> 明報, **張炳良：檢討委會唔湯唔水** (1 December 2019); HK01, **張炳良倡成立獨立調查委員會 信港鐵不單因遊行停駛** (25 August 2019); 明報, **34 前高官議員再發聯署信 強烈要求成立獨立調查委員會** (23 July 2019); 立場新聞, **王維基、袁國勇、沈祖堯等 35 人聯署 促政府實際行動化解社會矛盾 設獨立調查委員會** (19 July 2019); and 明報, **李明達：可設獨立調查委員會全面查衝突 不應只針對警察** (29 June 2019).

<sup>10</sup> 有線新聞, **【曾鈺成：政府需成立獨立調查委員會查 721、831 等事件】**; and 明報, **34 前高官議員再發聯署信 強烈要求成立獨立調查委員會** (23 July 2019).

<sup>11</sup> RTHK, **蔣麗芸：政府應成立獨立調查委員會買警方清白** (5 December 2019); 明報, **擊敗田北辰 素人：贏在貼地 劉卓裕稱居民多愁容 連月向街坊 3 萬句加油** (27 November 2019); 立法會會議（會議議程）**2019 年 10 月 23 日** (23 October 2019); RTHK, **Concession won't stop Protests: Rally Organisations** (4 September 2019); RTHK, **Michael Tien to push Beijing for Independent Probe** (7 August 2019); and 明報, **34 前高官議員再發聯署信 強烈要求成立獨立調查委員會** (23 July 2019).

<sup>12</sup> HK01, **劉鳴煒支持設獨立調查委員會：有助各方和解** (22 September 2019); 明報, **何沛謙：社會意見很清晰 最基本應設獨立調查委員會** (21 September 2019); and HK01, **盛智文撐獨立調查委員會 若警察無做錯毋須擔心** (31 July 2019).

<sup>13</sup> 端傳媒, **港中大校長段崇智公開信：冀政府正視訴求，成立獨立調查委員會** (18 October 2019); HK01, **恒大校長何順文支持設獨立調查委員會 無私查真相** (13 September 2019); 立場新聞, **科大校長促政府回應獨立調查訴求 拒學生遊行邀請** (31 July 2019); and 立場新聞, **王維基、袁國勇、沈祖堯等 35 人聯署 促政府實際行動化解社會矛盾 設獨立調查委員會** (19 July 2019).

<sup>14</sup> 立場新聞, **湯漢樞機聖誕賀辭 籲幫助因社運促成立獨立調查委員會** (23 December 2019); 立場新聞, **王維基、袁國勇、沈祖堯等 35 人聯署 促政府實際行動化解社會矛盾 設獨立調查委員會** (19 July 2019); and The Standard, **Church Leaders raise Heat on Carrie Lam for Public Inquiry** (19 July 2019).

15. The International Chamber of Commerce – Hong Kong;<sup>16</sup>
16. The Hong Kong Council on Social Service;<sup>17</sup>
17. The Hong Kong Association of Heads of Secondary Schools;<sup>18</sup>
18. The Professional Commons;<sup>19</sup> and
19. Numerous non-governmental organisations and civil society groups.<sup>20</sup>

---

<sup>15</sup> Hong Kong General Chamber of Commerce, **Statement by the Hong Kong General Chamber of Commerce** (22 July 2019).

<sup>16</sup> The Standard, **Business Chambers propose HK Violence Inquiry** (23 July 2019).

<sup>17</sup> SCMP, **Heavyweight Backing for Independent Inquiry into Hong Kong Extradition Bill Clashes** (19 July 2019).

<sup>18</sup> SCMP, **Heavyweight Backing for Independent Inquiry into Hong Kong Extradition Bill Clashes** (19 July 2019).

<sup>19</sup> The Professional Commons, **Letter to the Chief Executive** (24 July 2019).

<sup>20</sup> Mei-kam Tam et al., **Open Letter from 35 NGOs calling for an Independent Commission of Inquiry into Use of Force by Hong Kong Police on June 12, 2019** (30 June 2019); and Amnesty International Hong Kong, **Open Letter to the Chief Executive – Calling for an Independent Commission of Inquiry** (28 June 2019).

## ANNEX II

### **The Powers of a Col**

---

1. It is entitled to receive and consider any material notwithstanding such material would not be admissible as evidence in civil or criminal proceedings;<sup>21</sup>
2. It is entitled to determine what persons are permitted to give evidence;<sup>22</sup>
3. It is entitled to summon a person to give evidence or produce any article or document and can issue of warrants o arrest to compel such attendance;<sup>23</sup>
4. It is entitled to hold their hearings in camera;<sup>24</sup>
5. It is entitled to enter and inspect any premises and issue warrants for the searching of premises and the seizure of articles and documents;<sup>25</sup>
6. It can determine the procedure to be followed at the inquiry;<sup>26</sup> and
7. It can exercise such powers as may be necessary for the purposes of the inquiry.<sup>27</sup>

---

<sup>21</sup> Section 4(1)(a) of the COIO.

<sup>22</sup> Section 4(1)(b) of the COIO.

<sup>23</sup> Section 4(1)(d) and (e) of the COIO.

<sup>24</sup> Section 4(1)(i) of the COIO.

<sup>25</sup> Section 4(1)(k) of the COIO.

<sup>26</sup> Section 4(1)(m) and Section 5 of the COIO; and **Wu Chi Hung Alfred v. Commission of Inquiry into the Diaphragm Wall and Platform Slab Construction Works at the Hung Hom Station Extension under the Shatin to Central Link Project** [2019] HKCFI 66 at §18 (Chow J).

<sup>27</sup> Section 4(1)(n) of the COIO.



### ANNEX III

#### The Hong Kong Col Experience<sup>28</sup>

<u>Commission of Inquiry</u>	<u>Date of Appointment</u>	<u>Date of the Report</u>	<u>Commissioners (Background upon Appointment)</u>	<u>Circumstances Leading to the Appointment</u>	<u>Terms of Reference</u>
The Commission of Inquiry into Kowloon Disturbances, 1966	3 May 1966	December 1966	<ul style="list-style-type: none"> <li>♦ Michael Hogan (Chief Justice) (Chairman);</li> <li>♦ Kenneth Lo (Chief Commissioner of the Scout Association of Hong Kong);</li> <li>♦ Kindsay Ride (solicitor); and</li> <li>♦ Maurice Wong (former Vice Chancellor of the University of Hong Kong).</li> </ul>	In April 1966, a riot took place in Hong Kong. The CoI was established to investigate into the incident and to avoid any similar events in future.	<p>To inquire into:</p> <ul style="list-style-type: none"> <li>♦ The disturbances in Kowloon between 5 and 8 April 1966, inclusive;</li> <li>♦ The events leading up to such disturbances; and</li> <li>♦ The causes thereof.</li> </ul>
The Commission of Inquiry into the Collapse of Spectator Stand at Sek Kong	27 November 1968	15 March 1969	<ul style="list-style-type: none"> <li>♦ William Thomson (former Registrar General) (Chairman);</li> <li>♦ Lam Chik-ho (civil engineer); and</li> <li>♦ Yuen Tat-cho (architect).</li> </ul>	On 9 November 1968, a spectator stand was set up at Sek Kong for the performance of the 48 Gurkha Infantry Brigade Tattoo. The stand, filled with 1600 spectators, collapsed, causing heavy casualties.	<p>To inquire into:</p> <ul style="list-style-type: none"> <li>♦ The collapse of a spectator stand at a military tattoo held at Sek Kong on Saturday, 9 November 1968;</li> <li>♦ The causes thereof; and</li> <li>♦ The measures taken to deal with casualties caused thereby.</li> </ul>

<sup>28</sup> Legislative Council Secretariat, **Information Note: Commissions of Inquiry** (26 March 2003).

The Commission of Inquiry into the Fire on the Jumbo Floating Restaurant	6 November 1971	1972	<ul style="list-style-type: none"> <li>◆ Derek Cons (District Judge) (Chairman);</li> <li>◆ Raymond Kan (architect &amp; politician); and</li> <li>◆ S.C. Johnson.</li> </ul>	On 30 October 1971, a fire took place on the Jumbo Floating Restaurant, killing 34 and injuring 42.	<ul style="list-style-type: none"> <li>◆ To inquire into the fire which took place on board vessel 'Jumbo' in Aberdeen Harbour on Saturday, 30 October 1971 and to make such recommendations arising therefrom as the Commission may deem appropriate.</li> </ul>
The Commission of Inquiry into the Rainstorm Disasters, 1972	22 June 1972	28 November 1972	<ul style="list-style-type: none"> <li>◆ Yang Ti-liang, (District Judge) (Chairman);</li> <li>◆ Professor S. Mackey, (professor of engineering); and</li> <li>◆ Eric Cumine (architect).</li> </ul>	On 18 June 1972, a landslide occurred at Sau Mau Ping and Po Shan Road, killing 71 people and injuring 60.	<ul style="list-style-type: none"> <li>◆ To inquire into the circumstances in which the disasters occurred during the rainstorms between 16 and 18 June 1972.</li> <li>◆ To make recommendations as to how such disasters may be avoided in the circumstances of Hong Kong and its climate.</li> </ul>
The Commission of Inquiry into the Case of Peter Fitzroy Godber	13 June 1973	1973	<ul style="list-style-type: none"> <li>◆ Alastair Blair-Kerr (Senior Puisne Judge).</li> </ul>	<p>Peter Godber, a Chief Superintendent, fled Hong Kong when he was being investigated for corruption. It was alleged that he successfully left Hong Kong with the assistance from the Police. The public demanded the Government to investigate into the matter.</p>	<ul style="list-style-type: none"> <li>◆ To report on the circumstances in which a person, whose prosecution under the Prevention of Bribery Ordinance (Cap. 201) was at an advanced stage of consideration, was able to leave Hong Kong.</li> </ul>
The	13	1974	<ul style="list-style-type: none"> <li>◆ W. Collier (District Judge)</li> </ul>	On 8 November 1973, oil	<ul style="list-style-type: none"> <li>◆ To inquire into the</li> </ul>

Commission of Inquiry into the Ap Lei Chau Oil Spill	November 1973		<p>(Chairman);</p> <ul style="list-style-type: none"> <li>♦ S. Mackey (professor of engineering); and</li> <li>♦ Peter Ng (architect).</li> </ul>	<p>leaked from an oil tank at Ap Lei Chau and spilled on to the sea.</p>	<p>circumstances in which a storage tank at the Shell Oil Installation at Ap Lei Chau fractured, during the nights of 8 and 9 November 1973;</p> <ul style="list-style-type: none"> <li>♦ To ascertain how oil escaped from that tank into the sea, in spite of the various safety devices provided; and</li> <li>♦ To make recommendations to the Governor for the prevention of similar accidents in the future.</li> </ul>
The Commission of Inquiry into the Hong Kong Telephone Company Limited	21 February 1975	August 1975	<ul style="list-style-type: none"> <li>♦ Alastair Blair-Kerr (retired judge) (Chairman);</li> <li>♦ Gordon Macwhinnie (accountant);</li> <li>♦ J. Soong (businessman);</li> <li>♦ Lydia Dunn (businesswoman &amp; politician);</li> <li>♦ C.P. Hung (businessman); and</li> <li>♦ Dr. Ding Lik-kiu (Chairman, Hong Kong Christian Industrial Committee).</li> </ul>	<p>On 27 August 1974, the Hong Kong Telephone Company Limited announced that it would increase its telephone rental and other charges. The company was accused of mismanagement. The public called for further investigation by a CoI into the organisation and structure of the Company and its future policies for the expansion of its services together with the implication for its finances.</p>	<ul style="list-style-type: none"> <li>♦ To examine the affairs of the Hong Kong Telephone Company, including: <ul style="list-style-type: none"> <li>(a) Its management and organisation, its debt liabilities and its profitability;</li> <li>(b) The causes of its present cash flow problem;</li> <li>(c) Its plans for expansion and the implications for its finances; and</li> <li>(d) The adequacy, efficiency and quality of its services which it provides and is planning to provide.</li> </ul> </li> </ul>

					<ul style="list-style-type: none"> <li>♦ In the light of the foregoing to recommend:               <ul style="list-style-type: none"> <li>(a) What steps should be taken to render the Hong Kong Telephone Company financially viable having regard to:-                   <ul style="list-style-type: none"> <li>(i) Its financial position and prospects;</li> <li>(ii) The need to maintain an adequate and efficient service of proper quality;</li> <li>(iii) What is equitable to telephone uses; and</li> <li>(iv) The role of the telephone service in Hong Kong.</li> </ul> </li> <li>(b) What measures should be taken to ensure:                   <ul style="list-style-type: none"> <li>(i) That public control over the operations of the Company is adequate, having regard to its character as a private company; and</li> <li>(ii) That a proper balance is struck between the</li> </ul> </li> </ul> </li> </ul>
--	--	--	--	--	--



					availability of funds for the future maintenance and development of the Company's service and a reasonable return to shareholders on their investments.
The Commission of Inquiry into the Leung Wing-sang Case	6 February 1976	1976	♦ Yang Ti-liang (Judge of the Supreme Court).	Leung Wing-sang claimed that Lau Cheong-wah, who was a Station Sergeant at the time, paid him \$10,000 so that he would confess to wounding. The CoI was established to investigate into the matter.	<ul style="list-style-type: none"> <li>♦ To inquire into:               <ul style="list-style-type: none"> <li>(a) The circumstances leading up to and surrounding the arrest and charging of Leung Wing-sang; and</li> <li>(b) Whether or not these circumstances might have prejudiced Leung's trial.</li> </ul> </li> </ul>
The Commission of Inquiry into the Accident at Sek Kong Air Strip on 1 July 1977	16 September 1977	29 November 1977	♦ Archibald Zimmern (Judge of the Supreme Court).	On 1 July 1977, two bamboo structures collapsed during a sporting motor cycle exhibition and competition at Sek Kong, killing 2 people and injuring 65 people.	<ul style="list-style-type: none"> <li>♦ To inquire into and report on the events preceding a live television broadcast by Television Broadcasts Limited on 1 July 1977 from military land at Sek Kong;</li> <li>♦ To inquire into and report on the events during the evening of 1 July 1977 both prior to the broadcast and while it was taking place;</li> <li>♦ Having regard to its report thereon, to apportion</li> </ul>

					responsibility for the events during the evening of 1 July 1977; and ♦ To advise on any other matter which the Commission thinks proper.
The Commission of Inquiry into Inspector MacLennan's Case	8 July 1980	30 July 1981	♦ Yang Ti-liang (Judge of the Supreme Court).	There were allegations that the death of a Police Inspector, MacLennan, who had been investigating certain homosexual officials was a high powered police frame-up. People called for an investigation into the matter by a Col.	♦ To inquire into:- (a) Whether, in the light of all the evidence available and any additional enquiries the Commissioner makes, there are good grounds for believing the death of Inspector MacLennan was other than suicide and what conclusions should be drawn; (b) What official investigations immediately after the death of Inspector MacLennan were conducted, whether there were any shortcomings in them, and if so, what conclusions should be drawn as to the reasons for these shortcomings; (c) Whether the charges which were about to be preferred

The Commission of Inquiry into Witness Protection	12 January 1993	2 April 1993	♦ Michael Kempster (Vice-President of the Court of Appeal).	On 30 May 1991, Nguyen Manh-cuong was killed in a detention centre, allegedly by Nguyen Van-bau. One witness refused to give evidence due to safety concerns. As a result, the prosecution decided to offer no evidence and the	<p>against him on the day of his death were properly brought, and whether on evidence properly obtained;</p> <p>(d) What investigations or enquiries (other than those resulting in the charges at (c)) were conducted regarding Inspector MacLennan, whether they were conducted with propriety, and what bearing, if any, they had on Inspector MacLennan's death; and</p> <p>(e) Whether the investigations and enquiries under (b), (c) and (d) were properly motivated.</p> <p>♦ To examine the circumstances leading to the decision to offer no evidence in the case of Nguyen Van-bau;</p> <p>♦ To inquire why, instead of deciding to offer no evidence, the prosecution did not enter a nolle prosequi or did not make further attempts to adjourn the</p>
---	-----------------	--------------	---	---	--

				<p>defendant could not be prosecuted again. The public called for an inquiry into the decision of the prosecution and the existing witness protection arrangements.</p>	<p>case;</p> <ul style="list-style-type: none"> <li>♦ To inquire into the adequacy or otherwise of the witness protection arrangements made or offered to the witness Bui Van-xuan and, if appropriate, to describe other arrangements that might be made to him; and</li> <li>♦ To inquire into the adequacy or otherwise of existing arrangements for the protection of prosecution witnesses and, if appropriate, to make recommendations as to how such arrangements should be improved.</li> </ul>
The Commission of Inquiry into the Garley Building Fire	17 December 1996	29 August 1997	<ul style="list-style-type: none"> <li>♦ Woo Kwok-hing (Judge of the Supreme Court).</li> </ul>	<p>On 20 November 1996, a fire took place at the Garley Building, killing 40 and injuring 81 people.</p>	<ul style="list-style-type: none"> <li>♦ To inquire into the causes of the fire and the circumstances leading to the Garley Building tragedy on 20 November 1996;</li> <li>♦ To consider the response of the emergency services to the fire, and to advise on the adequacy and the coordination of that response; and</li> <li>♦ To make recommendations as to the actions needed to prevent such a tragedy from happening again.</li> </ul>



The Commission of Inquiry into Airport Opening	21 July 1998	20 January 1999	<ul style="list-style-type: none"> <li>♦ Woo Kwok-hing (Judge of the Court of First Instance) (Chairman); and</li> <li>♦ Edgar Cheng (doctor).</li> </ul>	<p>Chaos occurred at the Hong Kong International Airport on its opening day. A Col was established to investigate into the matter.</p>	<ul style="list-style-type: none"> <li>♦ To examine the planning and preparation for the opening of the new airport on 6 July 1998 and the extent to which it was ready to begin operation on that date;</li> <li>♦ To examine the operation of the new airport since it opened on 6 July 1998 (including but not limited to the flight information display system, franchised air cargo services, ramp handling and baggage handling and airside security) and to identify the roles of the various parties involved; and</li> <li>♦ To identify problems encountered in the operation of the new airport and to establish their causes and where the responsibility for each of them lies.</li> </ul>
The Commission of Inquiry on Allegations relating to	20 March 2007	20 June 2007	<ul style="list-style-type: none"> <li>♦ Yeung Chun-kuen (Justice of Appeal of the Court of Appeal) (Chairman);<sup>30</sup> and</li> <li>♦ Lee Jark-pui (businessman)</li> </ul>	<p>On 5 February 2007, Professor Bernard Luk, Bernard published a letter in Ming Pao News making three allegations which, if</p>	<ul style="list-style-type: none"> <li>♦ To inquire into the following matters:               <ul style="list-style-type: none"> <li>(a) To ascertain the facts relevant to the various allegations made;</li> </ul> </li> </ul>

<sup>30</sup> Woo Kwok-hing was originally appointed as the Chairman of the Commission. On 16 March 2007, the Chairman recused himself and on 20 March 2007, Chun-kuen Yeung was appointed in his place.

the Hong Kong Institute of Education <sup>29</sup>				established, would show that the Professor Arthur Li and Mrs. Fanny Law had been interfering with academic freedom and/or institutional autonomy.	<p>(b) To ascertain, on the facts as found, if there has been any improper interference by the Secretary for Education and Manpower or other Government officials with the academic freedom or the institutional autonomy of the Institute; and</p> <p>(c) On the basis of the findings in (a) and (b), to make recommendations, if any, as to the in which any advice by the Government to the Institute, with respect to the exercise of the Institute's powers or the achievement of its objects, might be given in future.</p>
The Commission of Inquiry into the Collision of Vessels near	22 October 2012	19 April 2013	<ul style="list-style-type: none"> <li>Michael Lunn (Justice of Appeal of the Court of Appeal) (Chairman); and</li> <li>Benjamin Tang (retired civil servant).</li> </ul>	On 1 October 2012, the Sea Smooth collided with the Lamma IV in the waters west of the Shek Kok Tsui light beacon off the north-west coast of Lamma Island,	<p>In summary:</p> <ul style="list-style-type: none"> <li>the Commission has to inquire into the facts and circumstances leading to and surrounding the collision of the two vessels that took place and:</li> </ul>

<sup>29</sup> Chun-kuen Yeung & Jark-pui Lee, **Report of the Commission of Inquiry on Allegations relating to the Hong Kong institute of Education** (20 June 2007).

Lamma Island <sup>31</sup>				sinking the latter. As a result, 39 people died.	<p>(a) Ascertain the causes of the incident and make appropriate finding thereof;</p> <p>(b) Consider and evaluate the general conditions of maritime safety concerning passenger vessels in Hong Kong and the adequacy or otherwise of the present system of control; and</p> <p>(c) Make recommendations on measures, if any, required for the prevention of the recurrence of similar incidents in future.</p>
The Commission of Inquiry into Excess Lead Found in Drinking Water <sup>32</sup>	13 August 2015	11 May 2016	<ul style="list-style-type: none"><li>♦ Andrew Chan (Judge of the Court of First Instance) (Chairman); and</li><li>♦ Alan Lai (professor &amp; retired civil servant).</li></ul>	<p>On 5 July 2015, a press conference revealed that heavy metals were found in the water delivered to some public and private buildings in Kowloon.</p>	<ul style="list-style-type: none"><li>♦ To ascertain the causes of excess lead found in drinking water in public rental housing developments;</li><li>♦ To review and evaluate the adequacy of the present regulatory and monitoring system in respect of drinking water in Hong Kong; and</li><li>♦ To make recommendations with regard to the safety of</li></ul>

<sup>31</sup> Michael Lunn & Benjamin Tang, **Report of the Commission of Inquiry into the Collision of Vessels near Lamma Island on 1 October 2012** (19 April 2013)

<sup>32</sup> Andrew Chan & Alan Lai, **Report of the Commission of Inquiry into Excess Lead Found in Drinking Water** (31 May 2016).

The Commission of Inquiry into the Construction Works at and near the Hung Hom Station Extension under the Shatin to Central Link Project <sup>33</sup>	10 July 2018	26 March 2019 <sup>34</sup>	<ul style="list-style-type: none"> <li>♦ MichaelHartmann (former Non-Permanent Judge of the Court of Final Appeal) (Chairman);</li> <li>♦ PeterHansford (professor of engineering)</li> </ul>	<p>In May 2000, the Government announced the blueprint to construct a railway known as the ‘Shatin to Central Link’.</p> <p>The construction of the Hung Hom MTR Station structure commenced in May 2013 and was completed by late 2016. In May 2018, however, concerns over the safety of the SCL station box structure arose.</p>	<p>drinking water in Hong Kong.</p> <p>In summary:</p> <ul style="list-style-type: none"> <li>♦ First, to inquire into the facts and circumstances surrounding the steel reinforcement fixing works and any other works which had given rise to public concern as to their safety. In short, the Commission was to determine whether these works were fit structurally sound;</li> <li>♦ Second, to determine whether the works had been executed in accordance with a particular construction contract. If not, why not, and whether rectifying steps had been taken; and</li> <li>♦ Third, to conduct a review of the relevant supervision, management and control systems of both the Government and MTR Corp. Ltd., making such recommendations as it considered necessary for</li> </ul>
---	--------------	-----------------------------	---	---	---

<sup>33</sup> Michael Hartmann & Peter Hansford, **Interim Report of Commission of Inquiry into the Construction Works at and near the Hung Hom Station Extension under the Shatin to Central Link Project** (26 March 2019).

<sup>34</sup> The date of the interim report, a final report not having yet been published.



[illegible]

## ANNEX IV

### **The Overseas Col Experience**

Many independent commissions, under various titles, have been set up overseas over the years. The list below illustrates some of the recent and / or important examples of such overseas experience.

<u>Commission of Inquiry (Country)</u>	<u>Date of Appointment</u>	<u>Commissioners (Background upon Appointment)</u>	<u>Selection Method of the Commissioners</u>	<u>Circumstances Leading to the Appointment</u>	<u>Terms of Reference</u>
The Truth and Reconciliation Commission (South Africa) <sup>35</sup>	10 April 1996	<ul style="list-style-type: none"> <li>♦ Desmond Tutu (archbishop &amp; activist) (Chairman);</li> <li>♦ Alex Boraine (politician) (Vice-Chairman);</li> <li>♦ Mary Burton (activist)</li> <li>♦ Bongani Finca (reverend &amp; civil servant);</li> <li>♦ Sisi Khampepe (judge);</li> <li>♦ Richard Lyster (lawyer);</li> <li>♦ Wynand Malan (lawyer and politician);</li> <li>♦ Khoza Mgojo (pastor);</li> <li>♦ Hlengiwe Mkhize (civil</li> </ul>	The President of South Africa shall appoint the commissioners in consultation with the Cabinet. The commissioners shall be fit and proper persons who are impartial and who do not have a high political profile. The Chairman and Vice-Chairman of the Commission are	Under apartheid, an institutionalised racial segregation system in place in South Africa during 1948 to the early 1990s, there had been serious violence and violation of human rights occurred all over the country.	<ul style="list-style-type: none"> <li>♦ To inquire into the violation of human rights and its cause;</li> <li>♦ To receive evidence from victims;</li> <li>♦ To facilitate and promote the granting of amnesty to the perpetrators of acts associated with political objectives to encourage full disclosure of all the</li> </ul>

<sup>35</sup> Truth and Reconciliation Commission of South Africa, **The Report of the Truth and Reconciliation Commission** (29 October 1998); and the Promotion of National Unity and Reconciliation Act 1995.

		servant);	designated by the President.	relevant facts relating to such acts; and
		<ul style="list-style-type: none"> <li>♦ Dumisa Ntsebeza (lawyer);</li> <li>♦ Wendy Orr (doctor);</li> <li>♦ Denzil Potgieter (lawyer);</li> <li>♦ Fazel Randera (doctor);</li> <li>♦ Yasmin Sooka (lawyer);</li> <li>♦ Glenda Wildschut (specialist in nursing and health care).</li> </ul>		<ul style="list-style-type: none"> <li>♦ To make recommendations to the President and the Minister on various matters.</li> </ul>
The Independent Commission on Policing for Northern Ireland <sup>36</sup>	3 June 1998	<ul style="list-style-type: none"> <li>♦ Christopher Patten (politician and former Governor of Hong Kong) (Chairman);</li> <li>♦ Maurice Hayes (politician);</li> <li>♦ Gerald Lynch (criminal justice college president)</li> <li>♦ Kathleen O'Toole (former Lieutenant Colonel of Massachusetts State Police);</li> <li>♦ Clifford Shearing (academic in policing);</li> <li>♦ John Smith (former Deputy Commissioner of the London Metropolitan Police);</li> <li>♦ Peter Smith (lawyer); and</li> <li>♦ Lucy Woods (Chief Executive of British Telecom in Northern Ireland and BT Ireland).</li> </ul>	Under the Belfast Agreement, the Commission had to be broadly representative with expert and international representation among its members. The Commission were selected according to such criteria.	<ul style="list-style-type: none"> <li>♦ To inquire into policing in Northern Ireland and, on the basis of its findings, bring forward proposals for future policing structures and arrangements, including means of encouraging widespread community support for those arrangements.</li> </ul>

<sup>36</sup> The Independent Commission of Policing for Northern Ireland, **A New Beginning: Policing in Northern Ireland** (September 1999); and **The Belfast Agreement** (10 April 1998).

Bahrain Independent Commission of Inquiry (Bahrain) <sup>37</sup>	29 June 2011	<ul style="list-style-type: none"> <li>♦ Mahmoud Bassiouni (law professor) (Chairman);</li> <li>♦ Badria Al-Awadhi (law professor);</li> <li>♦ Mahnoush Arsanjani (lawyer);</li> <li>♦ Philippe Kirsch (judge);</li> <li>♦ Nigel Rodley (law professor).</li> </ul>	The commissioners were chosen by the King of Bahrain due to their well established experience and reputation.	There had been social unrest in Bahrain in February and March 2011 against the Government, inspired in part by the Arab Spring, which was brutally repressed.	<p>In summary:</p> <ul style="list-style-type: none"> <li>♦ To inquire into whether the events of February and March 2011 (and thereafter) involved violations of international human rights law and norms; and</li> <li>♦ To make recommendations that it deems appropriate.</li> </ul>
The Commission for the Clarification of Truth, Co-existence, and Non-repetition (Colombia) <sup>38</sup>	5 April 2017	<ul style="list-style-type: none"> <li>♦ Francisco de Roux (priest) (Chairman);</li> <li>♦ Alejandra Miller (academic and activist);</li> <li>♦ Alejandro Valencia Villa (lawyer);</li> <li>♦ Ángela Salazar (activist);</li> <li>♦ Alfredo Molano Bravo (sociologist);</li> <li>♦ Marta Ruiz (journalist);</li> <li>♦ Carlos Martín Beristain (doctor and psychologist);</li> <li>♦ Lucía González (architect);</li> </ul>	The “Mechanism for the selection of the magistrates of the special jurisdiction for peace” will be tasked with selecting and appointing the 11 commissioners of the Commission, including the Chairman, based on merit.	A conflict between the Government and various guerrilla groups including the Revolutionary Armed Forces of Colombia (FARC) took place between 1964 and 2016, with over 218,000 deaths and approximately 5,000,000 individuals	<p>In summary:</p> <ul style="list-style-type: none"> <li>♦ To inquire into the conduct seriously violating human rights and international humanitarian law;</li> <li>♦ To inquire into the impact of the conflict;</li> <li>♦ To inquire into the causes of the conflict; and</li> <li>♦ To provide recommendations.</li> </ul>

<sup>37</sup> Bahrain Independent Commission of Inquiry, **Report of the Bahrain Independent Commission of Inquiry** (23 November 2011); and Royal Order of the King of Bahrain No. 28 of 2011 (29 June 2011).

<sup>38</sup> United Nations Security Council, **Letter dated 29 March 2017 from the Secretary-General addressed to the President of the Security Council** (21 April 2017); and Decree of the President of Colombia No. 588 of 2017.



Truth, Reconciliation and Reparations Commission (The Gambia) <sup>39</sup>	15 October 2018	<ul style="list-style-type: none"> <li>♦ Carlos Guillermo Ospina (lawyer);</li> <li>♦ Patricia Tobón Yagarí (lawyer); and</li> <li>♦ Saúl Franco (doctor).</li> </ul>	<p>The Commission shall consist of eleven members, all of whom shall be citizens of The Gambia appointed by the President, following consultation with various organisations, from amongst persons of high moral character and integrity who have distinguished themselves in their respective fields of vocation or communities. There has to be regard for the geographical, religious, cultural and gender diversity of the country in the appointment.</p>	<p>displaced.</p> <p>There were serious violations of human rights during the dictatorship of Yahya Jammeh between 1994 and 2017.</p>	<p>In summary:</p> <ul style="list-style-type: none"> <li>♦ To investigate and establish an impartial historical record of human right violations;</li> <li>♦ To establish the fate of disappeared victims;</li> <li>♦ To provide victims with an opportunity to relate their own accounts of abuses suffered</li> <li>♦ To grant reparations for the victims of abuses where appropriate;</li> <li>♦ To make recommendations for establishing appropriate preventive mechanisms, including</li> </ul>
---	-----------------	---	--	---	--

<sup>39</sup> Truth, Reconciliation and Reparations Commission Act 2017; Guidelines for Selection and Appointment of Commissioners to the Truth, Reconciliation and Reparations Commission in the Gambia; and Foroyaa, **President's Designated TRRC Appointees Announced** (24 August 2018).

		servant).		<p>The commissioners will be chosen in accordance with the Guidelines for Selection and Appointment of Commissioners to the Truth, Reconciliation and Reparations Commission in the Gambia.</p>		institutional and legal reform.
--	--	-----------	--	---	--	---------------------------------

## ANNEX V

### Proposed Terms of Reference

---

To inquire into the Government's handling of the proposal to pass the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 since March 2019 and the circumstances leading to the ensuing social unrest in Hong Kong from June to December 2019 ("**Unrest**"), having regard to the events set out in the **Schedule I** and the issues set out in **Schedule II**, and to give recommendations to diffuse social tension involved in the Unrest.

## **SCHEDULE 1**

### **Events to be Inquired Into**

---

The clashes that took part in various districts of Hong Kong and led to serious injuries on the following dates:

1. 12 June 2019 (including the large-scale clashes outside the Legco Complex and CITIC Tower).
2. 1 July 2019 (including the large-scale clashes outside the Legco Complex and the breaking into of the Legco Complex).
3. 14 July 2019 (including the large-scale clashes inside New Town Plaza in Sha Tin).
4. 21 July 2019 (including the large-scale clashes near the China Liaison Office and the Yuen Long gang attack on passengers).
5. 5 August 2019 (including the general strike and large-scale clashes in various districts).
6. 11 August 2019 (including the large-scale clashes in many districts, Police action inside Tai Koo MTR Station and shooting of the eye of a protestor).
7. 13 August 2019 (including protestor actions at the Hong Kong International Airport).
8. 31 August 2019 (including Police actions inside the Prince Edward MTR Station).
9. 29 September 2019 (including the large-scale clashes in many districts).
10. 1 October 2019 (including the large-scale clashes in many districts and shooting of a live round injuring a youth).
11. 4 to 6 October 2019 (including the large-scale clashes following the announcement of enactment of the Prohibition on Face Covering Regulations (Cap. 241K)).



12. 20 October 2019 (including the large-scale clashes in Kowloon and the use of water cannon at the Kowloon Mosque).
13. 2 to 8 November 2019 (including the circumstances leading to the death of Hong Kong University of Science and Technology student Chow Tzk-lok).
14. 11 to 15 November 2019 (including the siege of Chinese University campus, Police actions in various districts, the firing of teargas in Central and the firing of live rounds on 2 protesters in Sai Wan Ho).
15. 17 to 29 November 2019 (including the siege of Hong Kong Polytechnic University and the stampede in Yau Ma Tei on 18 November 2019).

## **SCHEDULE 2**

### **Issues to be Inquired Into**

---

1. The use of force by the Police (including the weapons available and used) and by protestors (including the weapons available and used).
2. Problems associated with identification, including the use of face covering tools by participants in conflicts, the non-use of identification by Police officers and the deployment of undercover officers.
3. Problems associated with arrests, including the arrest of bystanders to conflicts, the non-arrest of participants in conflicts (whether protestors, Police officers or gang members) and the arrest of juveniles.
4. Treatment of arrested persons, including alleged physical or verbal abuse, sexual harassment or assault, failure to provide sustenance, delayed access to lawyers and breaches of privacy.
5. The relationship between the Police and secondary actors such as journalists, medical personnel, social workers, and other parties attempting to mediate and / or de-escalate conflict and other disciplined services.
6. Response of the Government, the Executive Council and the Police to the Fugitives Bill, issues arising and various incidents in the Unrest, including the utility, speed, comprehensiveness and veracity of such responses.
7. Issues associated with statutory mechanisms, including the Public Order Ordinance (Cap. 245), the IPCCO and the Emergency Regulations Ordinance (Cap. 241).
8. Health issues arising from the weapons used by different participants in conflicts.
9. Political neutrality of civil servants and disciplined forces.

10. Sources of funding for and management of participants in the Unrest.

## **Explanatory Notes on Issues in Schedule II**

1. Careful consideration has been given to this list of issues particularly deserving of attention. Certain equally pressing issues were left off principally because it would be particularly difficult for them to be properly investigated. Thus, for example, the impact of the Unrest on Hong Kong's economy and infrastructure would be too broad and would be difficult to draw conclusions on (for example, the causes of any downturn could be due to matters other than the Unrest such as the trade dispute between the PRC and the United States and the impact may require time to materialise).
2. Of the issues listed, the HKBA is of the view that the first is the most important and should be prioritised, with the time and resources of the COI focused thereon. Public concerns over the use of excessive force by the Police is well reflected in opinion polls.<sup>40</sup> The litany of alleged incidents is both alarming and sobering.<sup>41</sup> This is a matter that requires thorough investigation if confidence is to be restored in the Police Force. However, the violence employed by civilians (of all sorts of political persuasions), particularly as regards privately held property, has also been extensive<sup>42</sup> and an inquiry into the Unrest cannot be comprehensive or fair without an examination thereof.
3. Regarding the sixth listed issue, the HKBA would expect a thorough investigation into the handling of the Fugitives Bill and the Unrest by the Government and all its constituent parts, in particular, by the Chief Executive and the Principal Officials. This would include issues such as:

---

<sup>40</sup> SCMP, *Police Reputation in Tatters across the Political Divide* according to Online Survey of Hong Kong Voters (21 December 2019); 立場新聞, 民調：市民對警隊滿意淨值創新低 急跌 60 個百分點 四成 民給 0 分 (6 December 2019); and 梁啟智, 對警續過半「零信任」 游離民意初見轉向 (22 November 2019).

<sup>41</sup> HKRev.Info, *Police Misconduct Database* (Undated); Anonymous, *Hong Kong Civil Police Gangs Database* (Undated); Netizens Organizing Police Abuse Investigation Data, *Statutory Powers and Monitoring of the Hong Kong Police Force: Investigation Report* (September 2019); and Neutral Legal Observers Group, *Periodic Report* (30 November 2019).

<sup>42</sup> HKFP, *Hong Kong Protesters rack up 'Enormous' Vandalism Repair Bill incl. HK\$10.5m in Property Maintenance Costs, Gov't says* (7 November 2019); and Reuters, *Hong Kong Firms, lacking Riot Insurance, pick up Pieces from Protest Damage* (21 October 2019).



- 3.1. why the Government pressed ahead with the Fugitives Bill in the months leading up to 9 June 2019 in spite of public opposition thereto and whether its conduct was appropriate;
  - 3.2. why the Government failed to withdraw the Fugitives Bill on 9 June 2019 and did not do so ultimately until 4 September 2019 and whether its conduct was appropriate;
  - 3.3. what the Government has done since 9 June 2019 to quell the Unrest, the sufficiency thereof, and whether the conduct of the Government contributed to or exacerbated the Unrest;
  - 3.4. the leadership and management of the Police, the planning and execution of operations by the Police, and the relationship between the Chief Executive and Principal Officials on the one hand and the Police on the other, during the course of the Unrest;
  - 3.5. in view of public doubts otherwise,<sup>43</sup> whether the Police has provided information and responded to inquiries accurately, fairly, meaningfully and comprehensively, particularly at their press conferences;
  - 3.6. what role the Executive Council has played as regards the Fugitives Bill and the Unrest, in particular, in the provision of their opinions and public views on such matters, and the sufficiency thereof.
4. The situation over the past 6 months has given rise to concerns over various statutes and the use thereof. There has been a repeated refusal by the Police to allow protests under the Public Order Ordinance (Cap. 245)<sup>44</sup> and an inquiry into the appropriateness thereof would help public understanding.
  5. A further item on the list of issues above is the political neutrality of civil servants and members of disciplined forces. Concerns over such neutrality have arisen in the context of circumstances such as a rally by civil servants in Chater Garden on 2 August 2019,<sup>45</sup> a

<sup>43</sup> Sydney Morning Herald, 'Police are telling us Lies': Hong Kong Protests no longer about Extradition Bill (5 September 2019).

<sup>44</sup> 蘋果日報, 【抗暴之戰】4 個半月首獲批不反對通知 民陣 12.8 遊行維園去遮打 (5 December 2019); HKFP, 4 Weekend Protest Marches banned by the Hong Kong Police (10 August 2019).

<sup>45</sup> SCMP, Hong Kong Civil Servants embarrass Government with Protest against Extradition Bill and Determination to 'stand together with Citizens' (3 August 2019).

petition allegedly made by Department of Justice officers against the Secretary for Justice,<sup>46</sup> comments by individual Police officers on social media accounts<sup>47</sup> and official statements made by associations of Police officers.<sup>48</sup> Concerns have also been raised as to the accuracy and the consistency of the Government's response to such concerns. The HKBA considers it important that such incidents (including the Government's response thereto) and the rules governing them need to be inquired into if public confidence in the neutrality of the civil service is to be restored.

---

<sup>46</sup> 東方日報, 警發表政治言論 被質疑違公僕守則 (7 November 2019).

<sup>47</sup> HK01, 【警方記者會】光頭 Sir 微博指法庭縱容或違警例 警：正在了解中 (11 October 2019).

<sup>48</sup> 成報, 民主派批四個警察協會違政治中立 (26 October 2019).